United States District Court Southern District of Texas

ENTERED

January 18, 2017
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS VICTORIA DIVISION

HERMAN LEE KINDRED,	§
TDCJ #00671207,	§
	§
Petitioner,	§
VS.	§ CIVIL ACTION NO. 6:17-CV-1
	§
LORIE DAVIS, Director, Texas	§
Department of Criminal Justice,	§
Correctional Institutions Division,	§
	. §
Respondent.	§

ORDER OF DISMISSAL

The petitioner, Herman Lee Kindred, is an inmate in the custody of the Texas Department of Criminal Justice ("TDCJ") who has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a judgment pursuant to which he is incarcerated. After reviewing all of the pleadings and the applicable law under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the Court concludes that this case must be **DISMISSED** without prejudice for lack of jurisdiction.

Kindred is arguing that two of the convictions used to enhance his punishment were insufficiently authenticated and that the indictment in his case was void as a result (Dkt. 1 at pp. 8–9). Kindred has filed at least one other federal habeas petition challenging the same conviction, and he concedes that that petition was dismissed with prejudice (Dkt. 1 at p. 15). *See* Southern District of Texas Case Number 6:15-CV-93.

An applicant wishing to file a successive federal habeas application with a district court must first "move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). Kindred must obtain authorization from the Fifth Circuit before filing this petition. Until he obtains that authorization, this Court lacks jurisdiction over the petition. *United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000).

Based on the foregoing, the Court **ORDERS** as follows:

- 1. The habeas corpus petition (Dkt. 1) is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction, and this docket is closed.
- 2. A certificate of appealability is **DENIED**.
- 3. All pending motions are **DENIED** as moot.

The Clerk shall provide a copy of this order to the parties.

SIGNED at Victoria, Texas, on

2017.

UNITED STATES DISTRICT JUDGE

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